

No. 12733

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United States  
Court of Appeals  
for the Ninth Circuit.

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ADOLPH W. ENGSTROM, Trustee in Bankruptcy  
for Northwest Chemurgy Cooperative, a Cor-  
poration, Bankrupt,

Appellant.

vs.

R. M. WILEY,

Appellee.

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Transcript of Record

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Appeal from the United States District Court,  
Eastern District of Washington,  
Northern Division.

FILED  
JULY 17  
1934  
U. S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
NORTHERN DIVISION



No. 12733

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

EGGERMAN, ROSLING & WILLIAMS,  
918 Joseph Vance Bldg.,  
Seattle 1, Washington,  
Attorneys for Plaintiff and Appellant.

HUGHES & JEFFERS,  
501 Doneen Bldg.,  
Wenatchee, Washington,  
Attorneys for Defendant and Appellee.





In the United States District Court for the Eastern  
District of Washington, Northern Division

In Bankruptcy No. 742

ADOLPH W. ENGSTROM, Trustee in Bank-  
ruptcy for Northwest Chemurgy Cooperative,  
a corporation, Bankrupt,

Plaintiff,

vs.

R. M. WILEY,

Defendant.

### COMPLAINT

Plaintiff alleges as follows:

1. The action arises under Section 70 of the Act of Congress relating to Bankruptcy, (U.S.C. Title 11, Chapter 7, Sec. 110) as hereinafter more fully appears.

2. At all times herein mentioned Northwest Chemurgy Cooperative was and is now a Washington corporation hereinafter sometimes referred to as "Chemurgy."

3. On May 29, 1947, Chemurgy duly filed a Petition for an Arrangement under Chapter XI of the Act of Congress relating to Bankruptcy in the United States District Court for the Western District of Washington, Northern Division, Cause No. 37569. On said date said Court entered an order accepting and approving Chemurgy's Petition for an Arrangement as properly filed under Chapter XI of said Act.

4. Chemurgy was unable to consummate the proposed Arrangement and upon a hearing duly noticed and held pursuant to Section 376 (2) of the Act of Congress relating to Bankruptcy, said Court on December 13, 1947, duly made and entered its order that Chemurgy is a Bankrupt under said Act and that Bankruptcy be proceeded with pursuant to the provisions of said Act.

5. Subsequent to said order determining Chemurgy a Bankrupt, after proceedings duly had therefore, plaintiff on January 6, 1948, was by the order of said Court duly appointed Trustee of the estate of said Bankrupt and thereafter on said January 6, 1948, plaintiff duly qualified as Trustee of said estate and since said date at all times has been the duly appointed, qualified and acting Trustee of the estate of said Bankrupt.

6. At all times herein mentioned Sections 5831-4 and 5831-6 of Remington's Revised Statutes of the State of Washington (Laws of 1941, Ch. 103), Secs. 1 and 3 were in full force and effect. Said statutes provide as follows:

“5831-4, Preference by insolvent corporations—  
Definition. Words and terms used in this act shall be defined as follows: (a) “Receiver” means any receiver, trustee, common law assignee, or other liquidating officer of an insolvent corporation. (b) “Date of application” means the date of filing with the Clerk of the Court of the petition or other application for the appointment of a receiver, pursuant to which application such appointment is made, or

in case the appointment of a receiver is lawfully made without court proceedings, then it means the date on which the receiver is designated, elected or other wise authorized to act as such. (c) "Preference" means a judgment procured or suffered against itself by an insolvent corporation or a transfer of any of the property of such corporation, the effect of the enforcement of which judgment or transfer at the time it was procured, suffered, or made, would be to enable any one of the creditors of such corporation to obtain a greater percentage of his debt than any other creditor of the same class. L. '41, ch. 103, Sec. 1"

"5831-6 Preference voidable when—Trust fund doctrine superseded. Any preference made or suffered within four (4) months before the date of application for the appointment of a receiver may be avoided and the property or its value recovered by such receiver. No preferences made or suffered prior to such four (4) months' period may be recovered, and all provisions of law or of the trust fund doctrine permitting recovery of any preference made beyond such four (4) months' period are hereby specifically superseded. L. '41, ch. 103, Sec. 4"

7. For at least four (4) months immediately prior to May 29, 1947, Chemurgy was unable to pay its debts in the ordinary course of business and was insolvent within the meaning of said statutes of the State of Washington.

8. Within said four months' period Chemurgy

being then insolvent paid to the defendant above named a total of \$2,252.78 upon an antecedent debt or debts then past due and owing by Chemurgy to said defendant upon which defendant is entitled to an offset of \$ None for credit given within said four months' period.

9. The effect of such payment is to enable the said defendant to obtain a greater percentage of the indebtedness due to said defendant than other creditors of the same class.

Wherefore, plaintiff prays for judgment against the defendant in the sum of \$2,252.78 with interest and with costs taxes in favor of the plaintiff and against the defendant.

EGGERMAN, ROSLING &  
WILLIAMS,

/s/ DeWITT WILLIAMS,  
Attorneys for plaintiff.

[Endorsed]: Filed May 28, 1948.

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[Title of District Court and Cause.]

### SUMMONS

To the above named Defendant: R. M. Wiley

You are hereby summoned and required to serve upon Eggerman, Rosling & Williams, plaintiff's attorneys, whose address is 918 Joseph Vance Building, Seattle 1, Washington, an answer to the complaint which is herewith served upon you, within

twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

A. A. LaFRAMBOISE,  
Clerk of Court.

[Seal] By /s/ EVA M. HARDIN,  
Deputy Clerk.

Date: May 28, 1948.

Return on Service of Writ attached.

[Endorsed]: Filed June 5, 1948.

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[Title of District Court and Cause.]

MOTION TO DISMISS

Comes Now the defendant, R. M. Wiley, by his attorneys, Hughes & Jeffers and Sam R. Sumner, Sr., and respectively moves the Court for the entry herein of an order dismissing the above-entitled action, upon the grounds that the plaintiff's complaint herein fails to state a claim upon which relief may be granted.

In support of this motion there is hereto attached statement of the reasons upon which defendant bases this motion.

Dated this 17th day of August, 1948.

HUGHES & JEFFERS,  
By /s/ JOSEPH L. HUGHES,  
/s/ SAM R. SUMNER, SR.,  
Attorneys for Defendant.

Statement of Reasons Why the Foregoing Motion  
For Dismissal Should Be Granted

In this action plaintiff seeks to recover moneys paid to the defendant by plaintiff corporation during the period from January 29, 1947, to May 29, 1947, on the grounds that such payments were preferences and voidable under the provisions of §§ 5831-4 and 5831-6 of Remington Revised Statutes of the State of Washington (Laws of 1941, Ch. 103).

It is defendant's contention that § 5831-5 of Remington's Revised Statutes of the State of Washington (Laws of 1941, Ch. 103, Sec. 2) was in full force and effect at all times mentioned in plaintiff's complaint. That said section provides as follows:

“§ 5831-5—Action to Recover—Limitation. If not otherwise limited by law, actions in the court of this State by a receiver to recover preferences may be commenced at any time within, but not after, six (6) months from the date of application for the appointment of such receiver.”

That the trustee, who is relying on the provisions of § 5831 Remington Revised Statutes of Washington as authority for his right to recover in this proceeding, is required to accept all conditions of the statute, which grants the existence of his right to recover. (*Dugger vs. Hamilton National Bank*, 29 Fed. Supp. 1021). In the case at bar the date of application for

the appointment of such receiver, as contemplated by the statute, was the 29th day of May, 1947, on which date the Northwest Chemurgy Cooperative, a corporation, filed its petition for an arrangement under Chapter XI of the Act of Congress relating to bankruptcy in the U. S. District Court for the Western District of Washington, Northern Division, Cause No. 37569 (Tit. 11, § 378 (2)). Consequently, the right granted the trustee under the State statute to recover preferential payments terminated on November 29, 1947.

[Endorsed]: Filed August 19, 1948.

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[Title of District Court and Cause.]

#### ORDER DENYING MOTION TO DISMISS

The motion of the defendant to dismiss this action came on regularly for hearing before the undersigned Judge of the above-entitled Court on August 23rd, 1948, the parties being represented in court by their attorneys of record herein. The Court heard the argument of counsel and thereafter considered the briefs filed on behalf of the parties. On January 5th, 1948, the Court made and filed his opinion herein denying said motion.

Now, Therefore, in accordance with said opinion and ruling and pursuant thereto, it is hereby ordered that defendant's said motion to dismiss be and the

same is hereby denied. The exception of the defendant is noted.

Done in Open Court this 27th day of January, 1949.

/s/ SAM M. DRIVER,  
Judge.

Presented by:

/s/ DeWITT WILLIAMS,  
Of attorneys for plaintiff.

Approved as to Form for Entry:

HUGHES & JEFFERS,  
Attorney for defendant.

[Endorsed]: Filed January 27, 1949.

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[Title of District Court and Cause.]

### AGREED STATEMENT OF FACTS

It Is Agreed by and between the above-named plaintiff and defendant that this action may be tried to the court upon the following agreed statement of facts:

#### I.

At all times herein mentioned Northwest Chemurgy Cooperative was and is now a Washington corporation, hereinafter referred to as Chemurgy. On May 29, 1947, Chemurgy duly filed a petition for an arrangement under Chapter XI of the Act of Congress relating to Bankruptcy in the United States District Court for the Western District of



Washington, Northern Division, Cause No. 37569. On said date said court entered an order accepting and approving Chemurgy's petition for an arrangement as property filed under Chapter XI of said Act. Chemurgy was unable to consummate the proposed arrangement and upon a hearing duly noticed and held pursuant to §376 (2) of the Act of Congress relating to Bankruptcy, said court on December 13, 1947, duly made and entered its order that Chemurgy is a bankrupt under said Act and that bankruptcy be proceeded with pursuant to the provisions of said Act. Subsequent to said order determining Chemurgy a bankrupt after proceedings duly had therefor, plaintiff, on January 6, 1948, was by the order of said court duly appointed Trustee of the estate of said bankrupt and thereafter on said January 6, 1948, plaintiff duly qualified as Trustee of said estate and since said date at all times has been the duly appointed, qualified and acting Trustee of the estate of said bankrupt. At all times herein material §5831-4 and §5831-6 of Rem. Rev. Stat. of the State of Washington (Laws of 1941, Chap. 103, Sections 1 and 3) were in full force and effect. For at least four months immediately prior to May 29, 1947, Chemurgy was unable to pay its debts in the ordinary course of business and was insolvent within the meaning of said statutes of the State of Washington. During all of said four months and at the present time there existed and now exists against said insolvent corporation and said bankrupt estate claims of general unsecured creditors on file with said court in said bankruptcy proceeding, upon

which claims from the inception thereof as debts of the corporation no payment has been made. The claims allowed and allowable are greatly in excess of the estate assets.

## II.

On January 27, 1947, the defendant R. M. Wiley, a resident of Waterville, Washington, sold and delivered to Chemurgy at Wenatchee, Washington, 79,510 lbs. of wheat at \$1.70 per bushel, for a total purchase price of \$2252.78. At the time of said sale on said date he personally received from Chemurgy its check No. 7237, dated January 27, 1947, payable to said defendant, and drawn on the Wenatchee Valley Branch of The Seattle-First National Bank. Defendant first deposited said check for payment in the Waterville Branch of The National Bank of Commerce on February 6, 1947, and said check was paid by The Wenatchee Valley Branch of The Seattle-First National Bank out of the funds of Chemurgy then on deposit with said bank on February 7, 1947.

## III.

The original of said check No. 7237 will be filed with the court as an exhibit on the trial of this action.

## IV.

On May 8, 1948, said Trustee made demand on the defendant for the return of said alleged preferential payment in the sum of \$2252.78, but the defendant has failed and refused to return said amount or any portion thereof to the Trustee or the bankrupt estate.

**Question for Decision**

The question for decision by the court under the facts of this case is whether or not the payment of said check by the Wentachee Valley Branch of The Seattle-First National Bank on February 7, 1947, out of the account of Chemurgy in said bank was a preference in the amount of \$2252.78 within the meaning of a preference as defined in Rem. Rev. Stat. §5831-4 (c).

The foregoing facts and question for the court are hereby agreed to this 28th day of February, 1950.

**EGGERMAN, ROSLING &  
WILLIAMS,**

By /s/ DeWITT WILLIAMS,  
Attorneys for Plaintiff.

**HUGHES & JEFFERS,**

By /s/ JOSEPH L. HUGHES,  
Attorneys for Defendant.

[Endorsed]: Filed April 10, 1950.

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[Title of District Court and Cause.]

**MOTION FOR REHEARING AND  
RECONSIDERATION**

Comes Now the plaintiff and moves the court for an order setting down this case for reargument and reconsideration.

This motion is based upon the fact that defendant filed no brief at the time of argument or since said date and the oral argument on behalf of defendant

at that time was likewise very brief. The Court has ruled upon the basis of a brief filed in another action which brief was based on certain facts not present in this case.

It is respectfully submitted that if the arguments contained in said other brief (Cause No. 745) as raised in said other briefs are to be applied to this action the plaintiff should have an opportunity to argue this action orally to the court in response to the points raised in said other briefs.

EGGERMAN, ROSLING &  
WILLIAMS,  
Attorneys for plaintiff.

[Endorsed]: Filed August 7, 1950.

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[Title of District Court and Cause.]

### ORDER

Plaintiff's Motion for Rehearing and Reconsideration in the above-entitled case is hereby denied.

Dated this 7th day of August, 1950.

/s/ SAM M. DRIVER,  
United States District Judge.

[Endorsed]: Filed August 7, 1950.

[Title of District Court and Cause.]

RECORD OF OBJECTIONS TO ACTION OF  
THE COURT AND REQUEST FOR AC-  
TION AT THE TIME OF THE SIGNING  
AND ENTRY OF FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

Be It Remembered that at the time of and as a part of the signing and entry of the findings of fact and conclusions of law and judgment herein the plaintiff, pursuant to Rule 46 of the Rules of Civil Procedure made known to the court his objections to the action of the court and made known to the court the action which he desired the court to take, as follows:

Objections to Action of the Court

1. Plaintiff objected to the entry of that portion of the finding of fact III reading: "That the plaintiff has failed to sustain the burden of proving the transaction constitutes an unlawful preference and was other than a cash transaction" on the grounds (a) that the facts stipulated prove that the payment of the check referred to in finding II on February 7, 1947, was a preference within the meaning of Rem. Rev. Statute 5831-4 and (b) that the transaction referred to in finding II was not a cash transaction and (c) said quotation of purported finding is not contained in the stipulation of facts.

2. Plaintiff objected to the entry of conclusion of law I on the grounds: (a) that the conclusion of

law to be drawn from the stipulated facts was that the payment on February 7, 1947, referred to in finding II was a preference within the meaning of Rem. Rev. Statutes § 5831-4, (b) that the transaction referred to therein was not a cash transaction as held by the court, (c) that the evidence, facts and finding of facts do not support the statement “\* \* \* there was no intent on the part of either party to create a debtor-creditor relationship” (d) the intent of the parties is immaterial.

3. Plaintiff objected to conclusion of law II that defendant was entitled to have a judgment dismissing the complaint on the ground (a) that the stipulated facts and pertinent law require the entry of judgment as prayed for in the complaint.

4. Plaintiff objected to the entry of judgment dismissing the complaint on the ground that the stipulated facts require, as a conclusion of law, that the payment to defendant of the sum of \$2,252.78 on February 7, 1947, was a preference in said amount within the meaning of Rem. Rev. Statute § 5831-4 (c) and was recoverable under Rem. Rev. Stat. §5831-6 by the plaintiff herein from the defendant.

5. Plaintiff objected to the failure of the court to answer the question for decision presented by the agreed statement of facts by holding that payment on February 7, 1947, to the defendant was a preference in the amount of said payment within the meaning of a preference as defined in Rem. Rev. Stat. §5831-4 (c).

At said time plaintiff also made known to the court that he wished the following action to be taken on the ground that such action was required by the stipulated facts and the conclusion of law to be drawn therefrom under the law relating to the recovery of preferential payments as contained in Rem. Rev. Stat. § 5831-4 and Rem, Rev. Stat. § 5831-6:

1. That the court enter the following conclusions of law instead of the conclusions entered by the court:

(a) "The payment of said check out of the funds of Chemurgy on deposit with the Wenatchee Valley Branch of The Seattle-First National Bank on February 7, 1947, was a transfer to the defendant of the property of said insolvent Northwest Chemurgy Cooperative, within the meaning of Rem. Rev. Stat. §5831-4 and a preference recoverable by the plaintiff from the defendant under Rem. Rev. Stat. of the State of Washington §5831-4 and §5831-6.

(b) Plaintiff is entitled to judgment against the defendant R. M. Wiley in said sum of \$2,252.78 with interest thereon at the rate of 6% per annum from May 8, 1948, until paid and for plaintiff's costs herein to be taxed.

2. That the court enter judgment for the plaintiff and against the defendant in accordance with the foregoing conclusion of law.

The foregoing record of objections made and

request for action of the court made this 29th day of September, 1950, at the time of and as a part of the signing and entry of findings of fact, conclusions of law and judgment herein.

Done by the Court.

/s/ SAM M. DRIVER,  
Judge.

The foregoing approved for signing and entry by the court at the time of signing and entry of findings, conclusions and judgment.

/s/ JOSEPH L. HUGHES,  
Of Attorneys for Defendant.

Presented by:

/s/ DeWITT WILLIAMS,  
Of Attorneys for Plaintiff.

[Endorsed]: Filed September 29, 1950.



[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The above-entitled action came on regularly for trial before the undersigned Judge of the above-entitled Court upon a written statement of agreed facts made and filed by the parties, the plaintiff being represented in Court by his attorneys of record, Eggerman, Rosling and Williams, and DeWitt Williams, and the defendant being represented in Court by his attorneys, Hughes & Jeffers and Joseph L. Hughes, and the Court having considered the facts as agreed and heard the argument of counsel and after due consideration of written briefs filed by both parties; now, therefore, the Court finds the facts in accordance with said agreed statement of facts as follows:

Findings of Fact

I.

At all times herein mentioned Northwest Chemurgy Cooperative was and is now a Washington corporation, hereinafter referred to as Chemurgy. On May 29, 1947, Chemurgy duly filed a petition for an arrangement under Chapter XI of the Act of Congress relating to Bankruptcy in the United States District Court for the Western District of Washington, Northern Division, Cause No. 37,569. On said date said Court entered an order accepting and approving Chemurgy's petition for an arrangement as properly filed under Chapter XI of said Act. Chemurgy was unable to consummate the

proposed arrangement and upon a hearing duly noticed and held pursuant to § 376 (2) of the Act of Congress relating to Bankruptcy, said Court on December 13, 1947, duly made and entered its order that Chemurgy is a bankrupt under said Act and that bankruptcy be proceeded with pursuant to the provisions of said Act. Subsequent to said order determining Chemurgy a bankrupt after proceedings duly had therefor, plaintiff on January 6, 1948, was by the order of said Court duly appointed Trustee of the estate of said bankrupt and thereafter on said January 6, 1948, plaintiff duly qualified as Trustee of said estate and since said date at all times has been the duly appointed, qualified and acting Trustee of the estate of said bankrupt. At all times herein material §5831-4 and §5831-6 of Rem. Rev. Stat. of the State of Washington (Laws of 1941, Chap. 103, §1 and 3) were in full force and effect. For at least four months immediately prior to May 29, 1947, Chemurgy was unable to pay its debts in the ordinary course of business and was insolvent within the meaning of said statutes of the State of Washington. During all of said four months and at the present time there existed and now exists against said insolvent corporation and said bankrupt estate claims of general unsecured creditors on file with said court in said bankruptcy proceeding, upon which claims from the inception thereof as debts of the corporation no payment has been made. The claims allowed and allowable in said bankruptcy proceedings are greatly in excess of the estate assets.

## II.

On January 27, 1947, the defendant R. M. Wiley, a resident of Waterville, Washington, sold and delivered to Chemurgy at Wenatchee, Washington, 79,510 lbs. of wheat at \$1.70 per bushel, for a total purchase price of \$2,252.78. At the time of said sale on said date he personally received from Chemurgy its check No. 7237 dated January 27, 1947, payable to said defendant, and drawn on the Wenatchee Valley Branch of the Seattle-First National Bank in said sum of \$2,252.78. Defendant first deposited said check for payment in the Waterville branch of the National Bank of Commerce on February 6, 1947, and said check was paid by the Wenatchee Valley Branch of the Seattle-First National Bank out of the funds of Chemurgy then on deposit with said bank on February 7, 1947. The original of said check has been admitted as an exhibit at the trial of this action.

## III.

On May 8, 1948, said Trustee made demand on the defendant for the return of said alleged preferential payment in the sum of \$2,252.78, but the defendant has failed and refused to return said amount or any portion thereof to the Trustee or the bankrupt estate.

That the plaintiff has failed to sustain the burden of proving that the transaction constituted an unlawful preference and was other than a cash transaction.

From the foregoing Findings of Fact, the Court draws the following

### Conclusions of Law

#### I.

That payment of said check out of the funds of Chemurgy on deposit with the Wenatchee Valley Branch of the Seattle-First National Bank on February 7, 1947, was not such a transfer to the defendant of the property of said insolvent Northwest Chemurgy Cooperative as to constitute an unlawful preference within the meaning of Rem. Rev. Stat. of the State of Washington, §5831-4, as the transaction was in substance and effect a cash transaction and there was no intent on the part of either party to create a debtor-creditor relationship.

#### II.

That defendant is entitled to have entered a judgment against the plaintiff, Adolph W. Engstrom, Trustee in Bankruptcy for Northwest Chemurgy Cooperative, dismissing plaintiff's complaint with prejudice and awarding defendant judgment for costs herein to be taxed in the sum of \$20.00.

The foregoing Findings of Fact and Conclusions of Law made and entered this 29th day of September, 1950.

/s/ SAM M. DRIVER,

Judge.

Approved as to form, subject to "Record of Ob-

jections," notice of presentation waived.

/s/ DeWITT WILLIAMS,  
Of Attorneys for Plaintiff.

Presented by:

/s/ JOSEPH L. HUGHES,  
Of Attorneys for Defendant.

[Endorsed]: Filed September 29, 1950.

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In the District Court of the United States for the  
Eastern District of Washington, Northern  
Division

No. 742

ADOLPH W. ENGSTROM, Trustee in Bank-  
ruptcy for Northwest Chemurgy Cooperative, a  
Corporation, Bankrupt,

Plaintiff,

vs.

R. M. WILEY,

Defendant.

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### JUDGMENT

This matter came on regularly before the under-  
signed judge of the above-entitled Court for trial  
on April 10, 1950, upon an agreed statement of  
facts made and filed by the parties hereto, plaintiff  
being represented in Court by his attorneys, Egger-  
man, Rosling & Williams, and DeWitt Williams,  
and the defendant being represented in Court by  
his attorneys, Hughes & Jeffers, and Joseph L.

Hughes, and the Court having made and entered its Findings of Fact and Conclusions of Law requiring entry of judgment for the defendant in accordance with his answer herein; now, therefore, pursuant to said Findings and Conclusions, it is hereby

Ordered, Adjudged and Decreed that the plaintiff's complaint herein be dismissed with prejudice.

It Is Further Ordered, Adjudged and Decreed that the defendant R. M. Wiley be and he is hereby granted judgment against the plaintiff, Adolph W. Engstrom, Trustee in Bankruptcy for Northwest Chemurgy Cooperative, a corporation, bankrupt, for his costs herein to be taxed by the Clerk, in the sum of \$20.00.

This judgment made and entered this 29th day of September, 1950.

/s/ SAM M. DRIVER,  
Judge.

Approved as to form, subject to "Record of Objections," notice of presentation waived.

/s/ DeWITT WILLIAMS,  
Of Attorneys for Plaintiff.

Presented by:

/s/ JOSEPH L. HUGHES,  
Of Attorneys for Defendant.

[Endorsed]: Filed September 29, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: R. M. Wiley, defendant and to Hughes & Jeffers and Joseph L. Hughes, his attorneys.

You and Each of You are hereby notified that the above named plaintiff, Adolph W. Engstrom, Trustee in Bankruptcy for Northwest Chemurgy Cooperative, a Corporation, Bankrupt, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the final judgment rendered and entered in the above-entitled cause on September 29, 1950, and from each and every part thereof.

Dated this .. day of October, 1950.

EGGERMAN, ROSLING &  
WILLIAMS,

/s/ DeWITT WILLIAMS,

Attorneys for Plaintiff Adolph W. Engstrom, Trustee in Bankruptcy for Northwest Chemurgy Cooperative.

Copy of This Notice of Appeal mailed Hughes & Jeffers and Joseph L. Hughes, attorneys for defendant, this 19 day of October, 1950.

A. A. LaFRAMBOISE,  
Clerk.

By /s/ EVA N. HARDIN,  
Deputy Clerk.

[Endorsed]: Filed October 19, 1950.

[Title of District Court and Cause.]

### COST BOND ON APPEAL

Know All Men by These Presents: That we, Adolph W. Engstrom, Trustee in Bankruptcy for Northwest Chemurgy Cooperative, a corporation, Bankrupt, as Principal, and United Pacific Insurance Company, as Surety, acknowledge ourselves to be jointly indebted to United States of America, appellee in the above cause, in the sum of Two Hundred Fifty and No/100 (\$250.00) Dollars, conditioned that, Whereas, on the 29th day of September, 1950, in the District Court of the United States for the Eastern District of Washington, in a suit pending in that court, wherein Adolph W. Engstrom, Trustee in Bankruptcy for Northwest Chemurgy Cooperative, a corporation, Bankrupt, was Plaintiff and R. M. Wiley was Defendant, a judgment was rendered against the said Plaintiff and the Plaintiff having filed in the office of the Clerk of the said District Court a notice of appeal therefrom to the United States Court of Appeals for the Ninth Circuit.

Now the Condition of the Above Obligation Is Such, that if the said Plaintiff shall prosecute his appeal to effect and answer all costs, if the appeal is dismissed or the judgment affirmed, or of such costs as the appellate court may award if the judgment



is modified, then the above obligation is void, else to remain in full force and effect.

Signed, sealed and dated this 9th day of October, 1950.

/s/ ADOLPH W. ENGSTROM,  
Trustee in Bankruptcy for  
NORTHWEST CHEMURGY  
COOPERATIVE, A CORP.,  
BANKRUPT,  
UNITED PACIFIC  
INSURANCE COMPANY.

[Seal] By /s/ ARMAND MINORCHIO,  
Attorney-in-Fact.

Countersigned:

/s/ TILESTON GRINSTEAD,  
Resident Agent,  
Seattle, Washington.

[Endorsed]: Filed October 19, 1950.

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[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To the Clerk of Said Court:

Herewith we hand you Notice of Appeal and Bond on Appeal in the above entitled cause.

Will you please prepare the Record on Appeal in the manner provided by Rule 75, consisting of all proceedings and evidence in this action, which the appellant understands to consist of the following:

1. Summons and Return of Service.
2. Complaint.
3. Answer.
4. Agreed Statement of Facts.
5. All Exhibits.
6. Motion for Rehearing and Reconsideration.
7. Order Denying Motion for Rehearing and Reconsideration.
8. Findings of Fact and Conclusions of Law.
9. Judgment.
10. Record of Objections to Action of the Court, and Request for Action.
11. Notice of Appeal.
12. Bond on Appeal.
13. Motion to Dismiss.
14. Order Denying Motion to Dismiss.
15. Designation of Record.

/s/ DeWITT WILLIAMS,  
EGGERMAN, ROSLING &  
WILLIAMS,

Attorneys for Plaintiff and Appellant Adolph W.  
Engstrom, Trustee in Bankruptcy for North-  
west Chemurgy Cooperative.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 27, 1950.

NORTHWEST PLANTIFF'S EXHIBIT NO. CHEMURGY CO-OPERATIVE MANUFACTURERS OF

No. 7237

STARCH - GLUCOSE - DEXTROSE AND BY-PRODUCTS

GENERAL OFFICE: 126 SO. WENATCHEE AVE. WENATCHEE, WASHINGTON January 27 1947

PAY TO THE ORDER OF R. M. Wiley

\$ 2252.78

REGISTERED 2252 AND 78 CTS

DOLLARS

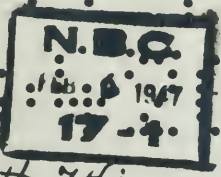
NORTHWEST CHEMURGY CO-OPERATIVE

WENATCHEE VALLEY BRANCH SEATTLE FIRST NATIONAL BANK 981420 WENATCHEE, WASHINGTON

BY B. S. Stahlbatt

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R. M. Wiley  
R. M. Wiley



# 74

PAID TO THE ORDER OF  
R. M. Wiley  
NORTHWEST CHEMURGY CO-OPERATIVE  
WENATCHEE, WASHINGTON  
JAN 27 1947

# 742

PLANTIFF'S EXHIBIT No.





10. Findings of Fact and Conclusions of Law.
11. Judgment for Defendant.
12. Notice of Appeal.
13. Cost Bond on Appeal.
14. Designation of Record on Appeal.

on file in the above entitled cause, and that the same constitutes the record for hearing of the Appeal from the Judgment of the United States District Court for the Eastern District of Washington, in the United States Court of Appeals for the Ninth Circuit as called for by the Appellant in his designation of record on Appeal.

(Note—Item No. 3 of Plaintiff's Designation —“Answer,” not included for the reason that no answer was filed, the case being tried on an Agreed Statement of Facts.)

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Spokane, in said District, this 8th day of November, A.D., 1950.

A. A. LaFRAMBOISE,  
Clerk of Said District Court.

[Seal]: By /s/ EVA N. HARDIN,  
Deputy.

[Endorsed]: No. 12733. United States Court of Appeals for the Ninth Circuit. Adolph W. Engstrom, Trustee in Bankruptcy for Northwest Chemurgy Cooperative, a Corporation, Bankrupt, Appellant, vs. R. M. Wiley, Appellee. Transcript of Record. Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Filed November 10, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 12733

ADOLPH W. ENGSTROM, Trustee in Bankruptcy  
for Northwest Chemurgy Cooperative, a Cor-  
poration, Bankrupt,

Appellant,

vs.

R. M. WILEY,

Appellee.

APPELLANT'S STATEMENT OF POINTS  
AND DESIGNATION OF RECORD

To: A. W. Wiley and Hughes & Jeffers, his  
attorneys:

You and Each of You are hereby notified that

appellant's statement of points on this appeal is as follows:

I.

In determining whether a payment of money by an insolvent corporation is a preference within the meaning of Rem. Rev. Stat. of the State of Washington, § 5831-4, the intent of the parties is immaterial. The determination is made on the basis of the effect of the payment in diminishing the funds of the corporation in payment of an obligation existing prior to the date of payment.

II.

The obligation here involved arose on the date wheat was sold and delivered to Chemurgy. The preferential payment under Rem. Rev. Stat. § 5831-4 occurred ten days later when the wheat was paid for out of the account of Chemurgy by its bank.

III.

The above-described transaction was not a "cash transaction" since the seller (appellee) did not receive payment for said wheat when he sold and delivered it.

IV.

The payment out of the Bank account of Chemurgy on February 7, 1947, to appellee was a preference recoverable by appellant as Trustee in Bankruptcy under Rem. Rev. Stat. § 5831-4 and § 5831-6.



Designation of Record

Appellant hereby designates as material to the consideration of this appeal all of the record certified to the United States Court of Appeals under date of November 8, 1950, by the Clerk of the District Court from which this appeal was taken.

Dated this 17th day of November, 1950.

EGGERMAN, ROSLING &  
WILLIAMS,

/s/ DeWITT WILLIAMS,  
Attorneys for Appellant.

Affidavit of Mailing attached.

[Endorsed]: Filed November 18, 1950.





